



**PUBLIC SERVICE BOARD MEETING
AGENDA ITEM
REGULAR MEETING
Wednesday, July 09, 2025**

SUBJECT

Advanced Funding Agreement with the Texas Department of Transportation (TXDOT) for Relocation of Water Infrastructure related to the Concepcion Street Bridge Replacement Project.

BACKGROUND

TXDOT has prepared plans on behalf of the City of El Paso to reconstruct the Concepcion Street bridge crossing the Franklin Canal in central El Paso. To accommodate the new bridge, the existing water facilities along Concepcion Street must be relocated in accordance with TXDOT's Utility Accommodation Policy. The existing water utilities are located within the dedicated City of El Paso right-of-way. Therefore, EPWater is responsible for 100% of the water infrastructure relocation cost necessary for the bridge construction. The project is scheduled to be bid by TXDOT in July 2025.

PRIOR PSB ACTION

- None

UTILITY KPI ALIGNMENT

Infrastructure Performance

EVALUATION PROCESS

The project will benefit the public by reducing delays and minimize inconvenience to the traveling public. EPWater estimates the total cost of water utility improvements included in the Concepcion Street project to be \$100,000. EPWater is responsible for 100% of this relocation cost.

FINANCIAL IMPLICATIONS

Sufficient funds are available in Account Number 4489, and the funding sources are Extendable Commercial Paper, and the Improvement Fund. This expenditure is part of the FY2025-26 budget.

PROPOSED ACTION REQUESTED

Consider and authorize the President/CEO or designee to sign an Advanced Funding Agreement with the Texas Department of Transportation for the relocation of water infrastructure related to the Concepcion Street Bridge Replacement project, with a water relocation project cost estimated at \$100,000; and authorize the President/CEO to approve any future amendments related to the Agreement for an amount of up to \$150,000.

SUPPORTING DOCUMENTATION PROVIDED

- EPWater Commitment Letter dated June 11, 2024
- Advanced Funding Agreement with TxDOT May 2025



June 11, 2024

Mr. Tomas Trevino, P.E., District Engineer
Texas Department of Transportation (TXDOT)
El Paso District
13301 Gateway Blvd West
El Paso, Texas 79928-5419

RE: EL PASO WATER COMMITMENT JUSTIFICATION

PROJECT: CSJ: 0924-06-655, 0924-06-656, and 0924-06-657 (Alps Dr., Concepcion St., and Hollings St.)

Dear Mr. Trevino:

Through coordination with your office, it has been determined that existing El Paso Water (EPWater) facilities must be relocated to accommodate the proposed improvements for the above-mentioned project. EPWater respectfully requests that our plans and specifications for all necessary construction be incorporated into your project. In this way, our water and sanitary sewer improvements can be let and constructed concurrently with your project.

If our request meets with your approval, EP Water can execute an Advanced Funding Agreement with your office after our cost estimates for water and sewer improvements have been finalized. This is the same process followed for previous TXDOT projects that incorporated our relocation plans. We understand that the primary purpose of this TXDOT project is for improvements of the bridges and the installation of utility facilities is incidental to this project. However, it is proven that concurrent utility work included with bridge construction contributes significantly to the efficiency of time and economics for TXDOT and all parties involved. It also provides for less traffic disruption to the traveling public in general and results in expeditious project completion.

We look forward to working together on this very important project. If you have any questions, please call Amy Castner, Utility Engineering Division Manager, at (915) 594-5647 or Fred Hernandez, Project Manager, at (915) 594-5643.

Sincerely,

John E. Balliew, P.E.
President and CEO

cc: Antonio Santana, P.E. - TXDOT
Zilthai O. Soto, P.E. - TXDOT
Gilbert Trejo, P.E. - Vice President-Operations & Technical Services
Amy Castner, P.E. - EPW Utility Engineering Division Manager

CCSJ # 0924-06-655
RCSJ # 0924-06-760
AFA CSJ # 0924-06-656
Utility ID: U00025726
District # 24 AFA ID Z00003008
Code Chart 64 # 60795
Project: Concepcion St Brdg Replace

STATE OF TEXAS §

COUNTY OF TRAVIS §

**ADVANCE FUNDING AGREEMENT FOR VOLUNTARY UTILITY RELOCATION
CONTRIBUTIONS ON STATE HIGHWAY IMPROVEMENT PROJECTS**

THIS AGREEMENT is made by and between the State of Texas, acting through the Texas Department of Transportation ("State") and the El Paso Water Utility Public Service Board ("Utility"),

WITNESSETH

WHEREAS, Transportation Code, Chapters 201, 221, and 361, authorize the State to lay out, construct, maintain, and operate a system of streets, roads and highways that comprise the State Highway System; and,

WHEREAS, Transportation Code, Chapter 203, Subchapter E, Transportation Code §203.092 authorizes the State to regulate the placement of public utility facilities along a state highway; and,

WHEREAS, Texas Transportation Commission Minute Order Number 116752 authorizes the State to undertake and complete a highway improvement generally described as: Concepcion Street Bridge Replacement ("Project"); and,

WHEREAS, Utility possesses facilities that are affected by the above mentioned highway improvement and Utility, and the State agrees that it is more economical or efficient for such relocation to be effected by including said contract in the State's highway construction contract;

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them kept and performed as hereafter set forth, the State and Utility do agree as follows:

AGREEMENT

1. Time Period Covered

This agreement becomes effective when signed by the last party whose signing makes the agreement fully executed, and the State and Utility will consider it to be in full force and effect until the Project described in this agreement has been completed and accepted by all parties or unless terminated, as provided.

2. Project Funding and Work Responsibilities

A. The State will authorize the performance of only those Project items of work which are eligible for relocation reimbursements or for which Utility has requested and has agreed to pay for as described in Attachment A - Payment Provision and Work Responsibilities, which

CCSJ # 0924-06-655
RCSJ # 0924-06-760
AFA CSJ # 0924-06-656
Utility ID: U00025726
District # 24 AFA ID Z00003008
Code Chart 64 # 60795
Project: Concepcion St Brdg Replace

is attached to and made a part of this contract. In addition to identifying those items of work to be paid for by payments to the State, Attachment A - Payment Provision and Work Responsibilities, also specifies those Project items of work that are the responsibility of Utility and will be carried out and completed by Utility, at no cost to the State. The Utility shall be responsible for costs that are shown on Attachment B, Estimated Utility Costs, which is attached to and made a part of this agreement.

- B.** If the Utility will perform any work under this contract for which reimbursement will be provided by or through the State, the Utility must complete training before a letter of authority is issued. Training is complete when at least one individual who is working actively and directly on the Project successfully completes and receives a certificate for the course entitled *Local Government Project Procedures and Qualification for the Texas Department of Transportation*. The Utility shall provide the certificate of qualification to the State. The individual who receives the training certificate may be an employee of the Utility or an employee of a firm that has been contracted by the Utility to perform oversight of the Project. The State in its discretion may deny reimbursement if the Utility has not designated a qualified individual to oversee the Project.
- C.** Payment under this contract beyond the end of the current fiscal biennium is subject to availability of appropriated funds. If funds are not appropriated, this contract shall be terminated immediately with no liability to either party.

3. Termination

- A.** This agreement may be terminated in the following manner:
 - 1. By mutual written agreement and consent of both parties;
 - 2. By either party upon the failure of the other party to fulfill the obligations set forth in this agreement; or
 - 3. By the State if it determines that the performance of the Project or utility work is not in the best interest of the State.
- B.** If the agreement is terminated in accordance with the above provisions, Utility will be responsible for the payment of Project costs incurred by the State on behalf of Utility up to the time of termination.

4. Right of Access

If Utility is the owner of any part of the Project site, Utility shall permit the State or its authorized representative access to the site to perform any activities required to execute the work.

5. Adjustments Outside the Project Site

Utility will provide for all necessary right of way and utility adjustments needed for performance of the work on sites not owned or to be acquired by the State.

6. Responsibilities of the Parties and Indemnity

Utility acknowledges that it is not an agent, servant, employee of the State, nor is it engaged in a joint enterprise, and it is responsible for its own acts and deeds and for those of its agents or

CCSJ # 0924-06-655
RCSJ # 0924-06-760
AFA CSJ # 0924-06-656
Utility ID: U00025726
District # 24 AFA ID Z00003008
Code Chart 64 # 60795
Project: Concepcion St Brdg Replace

employees during the performance of the work on the Project. To the extent permitted by law, Utility agrees to indemnify and hold harmless the State, its agents and employees, from all suits, actions, or claims and from all liability and damages for any and all injuries or damages sustained by any person or property in consequence with the performance of design, construction, maintenance, or operation of the Utility facility. Such indemnity includes but is not limited to any claims or amounts arising or recovered under the "Worker's Compensation Law", the Texas Tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code; or any other applicable laws or regulations, all as time to time may be amended.

7. Sole Agreement

In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between Utility and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

8. Successors and Assigns

The State and Utility each binds itself, its successors, executors, assigns, and administrators to the other party to this agreement and to the successors, executors, assigns, and administrators of such other party in respect to all covenants of this agreement.

9. Amendments

By mutual written consent of the parties, the scope of work and payment provisions of this agreement may be amended prior to its expiration.

10. Inspection and Conduct of Work

Unless otherwise specifically stated in Attachment A - Payment Provision and Work Responsibilities, to this contract, the State will supervise and inspect all work performed hereunder and provide such engineering inspection and testing services as may be required to ensure that the Project is accomplished in accordance with the approved plans and specifications. All correspondence and instructions to the contractor performing the work will be the sole responsibility of the State. Unless otherwise specifically stated in Attachment A to this contract, all work will be performed in accordance with the Utility Accommodation Rules as set forth in 43 Texas Administrative Code §21.31 et. seq. adopted by the State and incorporated in this agreement by reference, or special specifications approved by the State.

11. Maintenance

Upon completion of the Project, Utility will assume responsibility for the maintenance of the completed Utility facility unless otherwise specified in Attachment A to this agreement.

12. Notices

All notices to either party by the other required under this agreement shall be delivered personally or sent by certified or U.S. mail, postage prepaid, addressed to such party at the following addresses:

CCSJ # 0924-06-655
RCSJ # 0924-06-760
AFA CSJ # 0924-06-656
Utility ID: U00025726
District # 24 AFA ID Z00003008
Code Chart 64 # 60795
Project: Concepcion St Brdg Replace

Utility:	State:
<u>President and CEO</u>	Director of Contract Services
<u>El Paso Water</u>	Texas Department of Transportation
<u>1154 Hawkins Blvd P.O. Box 511</u>	125 E. 11 th Street
<u>El Paso, Texas 79961-0511</u>	Austin, Texas 78701

All notices shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided in this agreement. Either party may change the above address by sending written notice of the change to the other party. Either party may request in writing that such notices shall be delivered personally or by certified U.S. mail and such request shall be honored and carried out by the other party.

13. State Auditor

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Acceptance of funds directly under this contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

14. Signatory Warranty

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

15. Access to Information

The Utility is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.

CCSJ # 0924-06-655
RCSJ # 0924-06-760
AFA CSJ # 0924-06-656
Utility ID: U00025726
District # 24 AFA ID Z00003008
Code Chart 64 # 60795
Project: Concepcion St Brdg Replace

Each party is signing this agreement on the date stated under that party's signature.

THE UTILITY

Signature

Typed or Printed Name

Title

Date

THE STATE OF TEXAS

District Engineer

Date

CCSJ # 0924-06-655
RCSJ # 0924-06-760
AFA CSJ # 0924-06-656
Utility ID: U00025726
District # 24 AFA ID Z00003008
Code Chart 64 # 60795
Project: Concepcion St Brdg Replace

ATTACHMENT A

PAYMENT PROVISION AND WORK RESPONSIBILITIES

1. Description of the Work Items

The parties agree that the existing water pipelines shall be relocated and adjustments shall be made along Concepcion Street between US 62 (Paisano Drive) and SH 20 (Alameda Avenue). The El Paso Water facilities shall be owned, operated, and maintained by Utility from and after completion and final acceptance by the State and Utility. The estimated total construction cost for the relocated and adjusted facilities is \$77,180.00. The parties agree that it is their intent to complete the relocation improvements within this estimate of cost.

2. Actual Cost Agreement

Utility will be responsible for paying all costs associated with the planning, specification, and estimate (PS&E) development, and construction of the proposed utility work to the extent such is not reimbursed pursuant to state law. All the costs associated with construction of the waterline items for the Project shall be provided as defined under the Standard Utility Agreement, Utility Joint Use Agreement, and/or the Agreement to Contribute Funds executed between the State and Utility.

3. Schedule of Payments

- A.** At least forty-five (45) days prior to the date set for receipt of the construction bids, the Utility shall remit its remaining financial share for the State's estimated construction oversight and construction costs. Utility must advance to the State one hundred percent (100%) of its share of the estimated Project utility construction costs. The amount to be advanced for the utility improvements is estimated to be \$77,180.00 (See Attachment B – Estimated Utility Costs)
- B.** In the event the State determines that additional funding is required by the Utility at any time during the Project, the State will notify the Utility in writing. The Utility is responsible for one hundred percent (100%) of the authorized project cost and any overruns. The Utility will make payment to the State within thirty (30) days from receipt of the State's written notification.
- C.** Whenever funds are paid by the Utility to the State under this agreement, the Utility will remit a warrant made payable to the "Texas Department of Transportation." The warrant will be deposited by the State and managed by the State. Until the final Project accounting, funds may only be applied by the State to the Project.
- D.** Upon completion of the Project, the State will perform an audit of the Project costs. Any funds due by the Utility, the State, or the Federal Government will be promptly paid by the owing party.

4. Work Responsibilities

- A.** The **Utility** shall provide the following services under this contract:
 - i. Responsible for engaging the services of a Texas Registered Professional Engineer to prepare drawings and technical specifications for waterline relocations and adjustments along Concepcion Street.

CCSJ # 0924-06-655
RCSJ # 0924-06-760
AFA CSJ # 0924-06-656
Utility ID: U00025726
District # 24 AFA ID Z00003008
Code Chart 64 # 60795
Project: Concepcion St Brdg Replace

- ii. Provide the plans and specifications to the State to include in the current planning specifications and estimate package being prepared by representatives of the Texas Department of Transportation's West Area Office.
- iii. Secure all necessary permitting as may be required for the installation of the waterline.
- iv. Arrange and coordinate with the contractor, through the State, materials and equipment testing, rejection of all work not conforming to minimum requirements of the construction contract documents, maintenance of the proposed waterline during construction, and the relocation of waterline and connection of services to customers.
- v. Advise the State of work that Utility determines should be corrected or rejected.
- vi. Arrange, observe, and inspect all acceptance testing and notify the State of the results of these activities.
- vii. Provide inspection services for the construction, notify the State of defects and deficiencies in the work, and observe actions of the contractor to correct such defects and deficiencies.
- viii. Assume all responsibility for the maintenance of the existing waterline during and upon completion of the construction contract.
- ix. Ensure all Texas Commission on Environmental Quality and all other regulatory rules, regulations and laws are strictly adhered to.
- x. Prepare and submit both a certificate of substantial completion and a list of observed items requiring completion or correction for the relocations and adjustments to the Project Engineer for concurrence.
- xi. Coordinate all construction activities performed by Utility's staff for the relocations and adjustments through the Project Engineer.

B. The State shall provide the following services under this contract:

- i. Combine the waterline relocation and adjustment plans with the plans being prepared for the Project.
- ii. Review and approve the final construction plans prior to any construction-related activities. In order to ensure federal and/or state funding eligibility, projects must be authorized by the State prior to advertising for construction.
- iii. Advertise for construction bids, issue bid proposals, receive and tabulate the bids, and award and administer the contract for construction of the Project.
- iv. Negotiate and administer all field changes and change orders required for the Project. All change orders increasing construction costs for Utility's Project shall be submitted to Utility for review and approval together with an evaluation. Utility agrees to review and either approve or disapprove all change orders within five (5) business days after receipt of such order unless Utility Board's approval is necessary in which case Utility shall bring the item to Utility Board as soon as reasonably possible.
- v. Provide overall project management to supervise the day-to-day activities of the construction and monitor the activities of the contractor to promote the timely and efficient completion of the Project in accordance with the approved Plans and Specifications and construction schedule.

CCSJ # 0924-06-655
RCSJ # 0924-06-760
AFA CSJ # 0924-06-656
Utility ID: U00025726
District # 24 AFA ID Z00003008
Code Chart 64 # 60795
Project: Concepcion St Brdg Replace

- vi. Conduct field observations and coordinate with Utility's inspectors and the contractor to cure defects and deficiencies in the construction prior to final acceptance.
- vii. Make timely payment to the contractor for work performed in connection with the Project.
- viii. Ensure access and permit Utility's inspectors and other authorized representatives to inspect the waterline construction at all times.
- ix. Conduct and coordinate final inspection of the Project in the presence of Utility's Engineer and Inspector, transmit final list of items to be completed or repaired and observe contractor correction of same.
- x. Maintain job file.

CCSJ # 0924-06-655
RCSJ # 0924-06-760
AFA CSJ # 0924-06-656
Utility ID: U00025726
District # 24 AFA ID Z00003008
Code Chart 64 # 60795
Project: Concepcion St Brdg Replace

ATTACHMENT B ESTIMATED UTILITY COSTS

Based on various calculations, following are those amounts due and payable for Utility's costs associated with this project.

Total Estimated Costs
\$77,180.00

Less Betterment Amount Due from Utility
\$0

Amount of total utility relocation Costs
\$77,180.00

Estimated Amount Eligible for Reimbursement
(Calculated eligibility Ratio – 0%)
\$0

Amount of Utility Adjustment Due from Utility
\$77,180.00

Estimated amount to be included in Construction Agreement

A. Betterment	\$0
B. Utility Adjustment	<u>\$77,180.00</u>

GRAND TOTAL	<u>\$77,180.00</u>
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